IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1627 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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PARIJAT SOCIETY ASSOCIATION - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR MR CJ VIN, MB GOHIL ,MR VILAS G GOSWAMY for Petitioner
MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent NOS. : 1&4
MR MB GANDHI for Respondent No : 2,
MS RUMI M GANDHI for Respondent No : 2,
MR SN SHELAT, SR. ADVOCATE WITH MR NV ANJARIA for Respondent No : 3
MR MITUL K SHELAT for Respondent No. 5

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/01/2006

ORAL JUDGMENT

1. In the present petition, the petitioner, which

claims to be registered association, has challenged the decision of respondent no.2 and respondent no.3 to cancel the allotment of land admeasuring 6700 Sq.Mts., whose management was entrusted to the petitioner for development of a garden for public utility.

2.1 The short facts leading to the present petition are that in Vapi Industrial Area, there was a plot admeasuring 16,782.08 Sq.Mts., marked as plot bearing No. 14/5. For the purpose of construction and management of school, Respondent No.2 – Gujarat Industrial Development Corporation (hereinafter referred to as “G.I.D.C.”, for short) decided to allot said plot to respondent No.5 – Educational Trust. It is the case of the respondents that well equipped modern institute for higher studies was sought to be set-up on the said plot by respondent No.5 with cooperation of Respondent No.2. (G.I.D.C.). For the above purpose at a concessional rate, the said plot was allotted to respondent No.5 in the year 1999.

2.2 It appears that the plot admeasuring 2700 Sq.Mts. adjacent to plot No. 14/5 was meant for green space and was reserved for children's park. Since the land was situated within the Notified Area Authority,

G.I.D.C. decided to hand over the said plot to Notified Area Officer – respondent no.3 herein. Correspondence was entered into between G.I.D.C. and respondent no.3. Eventually, possession of certain plot of land near plot No. 14/5 was given to respondent no.3. It appears that at this stage, some mistake has cropped up. Instead of handing over the plot admeasuring 2700 Sq.Mts. (No.G/1) to respondent no.3, at least on paper what emerges is that a plot admeasuring 6700 Sq.Mts. was transferred to respondent no.3 by respondent no.2, which comprises of original plot of 2700 Sq.Mts. (No.G/1) meant for children's park and another plot admeasuring 4000 Sq.Mts. which was forming on the northern portion of plot No. 14/5. The case of the respondents is that this area of 4000 Sq.Mts. was already allotted to respondent No. 5 for setting up educational institution and not meant to be transferred to respondent No.3 for development of children's park. Be that as it may, though mistakenly, through correspondence between respondent no.2 and respondent no.3, possession of total area of 6700 Sq.Mts. was shown to have been entrusted to respondent no.3 for development of children's park by respondent no.3 or for entrusting the same to N.G.O. or a society or association for its development and maintenance.

3. The petitioner herein was desirous of developing park for the use of children and other residents of the area. The petitioner had, therefore, initiated correspondence with respondent No.3 way back in the year 1999. After much correspondence and pursuance, respondent no.3 decided to allot the above mentioned block of 6700 Sq.Mts. of land to the petitioner. This area of 6700 Sq.Mts., as noted earlier, comprises of two different plots; one, ad-measuring 2700 Sq.Mts. (No.G/1) on the north- western side of Plot No. 14/5, and another, plot 4000 Sq.Mts. adjacent thereto, which was in reality a part of Plot No. 14/5. Respondent no.3 eventually issued an order dated 13th August, 2004 in favour of the petitioner. In the order dated 13th August, 2004, it is stated that certain area of plot has been handed over to the petitioner on the terms and conditions mentioned therein. Unfortunately, neither area of plot nor its boundaries are indicated. The case of the petitioner is that the petitioner was put in possession of the entire plot of 6700 Sq.Mts. for development and maintenance of garden for public utility and that the petitioner has since then tried to develop the plot by planting trees and creating other facilities. It appears that on 5th

February, 2005 G.I.D.C. cancelled the allotment of entire plot and open land admeasuring 6700 Sq.Mts. Respondent no.3, therefore, in turn conveyed the same to the petitioner by his communication dated 5th February, 2005 and indicated to the petitioner that plot stands resumed and the possession is to be taken back by G.I.D.C.

4.1 Learned advocate for the petitioner strongly urged that entire area of 6700 Sq.Mts. was handed over to the petitioner on terms and conditions as indicated in order dated 13th August, 2004. He further submitted that the petitioner has not breached any condition. The allotment, therefore, cannot be cancelled.

4.2. It was further contended that no hearing was given to the petitioner before cancellation of allotment. There is, therefore, breach of principals of natural justice.

4.3 It was also contended that the orders passed by respondent Nos. 2 and 3 respectively are not reasoned orders.

4.4 It was lastly contended that there is no mistake

while handing over the entire plot to the petitioner and respondent no.5 was alloted only portion of plot No. 14/5. The remaining area admeasuring 4000 Sq.Mts. along with plot meant for park admeasuring 2700 Sq.Mts. was handed over to the petitioner. Thus, the petitioner was put in possession of 6700 Sq.Mts. on which the petitioner has taken steps to develop a park.

5. On the other hand, learned advocate Mr. Gandhi for G.I.D.C. submitted that G.I.D.C. has mistakenly alloted 6700 Sq.Mts. of land to Notified Area Authority and in fact only 2700 Sq.Mts. of land was meant for children's park. He submitted that entire plot of 14/5 was alloted to respondent No. 5 for its use for setting up educational institute.

6. Mr. S.N.Shelat, learned Senior advocate appearing with Mr. Anjaria for respondent no.3 – Notified Area Authority, submitted that the petitioner was alloted the plot only for its maintenance. Such allotment was without consideration and creates no right in favour of the petitioner. The petitioner cannot oppose to any change in order of allotment.

7. Learned advocate Mr. Mithul Shelat for respondent no. 5- Trust, submitted that the Trust was in fact handed over plot No. 14/5. It was later on that some measurements were taken which alarmed respondent no.5. Respondent no.5, therefore, approached the authorities. The entire issue was clarified. He submitted that respondent no. 5 is in process of setting up of educational institute and the petitioner cannot prevent the extension of the institute.

8. Having considered the rival submission, it appears that under communication dated 13th August, 2004, the petitioner was entrusted certain plot for developing the same as garden and for its maintenance. Neither the area nor the boundaries of such plot have been indicated in the letter dated 13th August, 2004. Nevertheless, it is not seriously in dispute that though by mistake, what was sought to be handed over to the petitioner was total 6700 Sq. Mtrs. of land. This, according to the respondents, was a clear error, since the plot meant for children's park was only admeasuring 2700 Sq.Mtrs. (No.G/1) and another block of 4000 Sq.Mtrs. of land which formed north-eastern portion of plot No. 14/5 was erroneously clubbed with the same.

9. The G.I.D.C. which is owner of the plot in question has clarified this aspect of the matter by filing affidavit of responsible officer. There is nothing on record to suggest that such averments are not correct. No allegations of personal *mala-fide* have been made by the petitioner. I, therefore, have no reason to disbelieve the version of responsible officer of G.I.D.C. who has clarified the situation on oath. Respondent no.3 - Notified Area Authority was acting upon the plot being transferred to it by G.I.D.C. The respondent no.3. therefore, neither had any material to ascertain the exact area or boundaries of the plot nor had any authority to grant any land in excess of what G.I.D.C. meant to convey. Therefore, respondent no.3 only conveyed and relied the order passed by respondent no.2 and immediately conveyed to the petitioner its recession to assign the rest for development and maintenance of a garden. In fact, if the version of G.I.D.C. is to be believed, which as above indicated. I am inclined to, 4000 Sq.Mts. out of total 6700 Sq.Mts. sought to be handed over to the petitioner was already alloted to respondent no.5 when the entire plot No. 14/5 was granted to said respondent upon payment of certain amount for the

purpose of creating a business school.

10. For the above reasons, I find that respondents have committed no error in canceling the allotment of the plot; firstly, by G.I.D.C. in favour of respondent no. 3 and in turn by respondent no.3 in favour of the petitioner. The petitioner who was granted only permission to occupy, develop and maintain such plot as a garden had no legal right, title and interest to resist such a cancellation. On account of these two reasons, firstly, that cancellation was for a valid reason and secondly, that the petitioner had no right to resist such a cancellation, I find that the petitioner has not made out any case to oppose the actions of the respondents. When the petitioner had no vested right to continue to hold the land in question, the question of hearing the petitioner does not arise. The contentions of the petitioner, are therefore, turned down.

11. Despite the above observations, small area of dispute still survives. G.I.D.C has also not disputed that plot admeasuring 2700 Sq.Mts. (No.G/1) on the norther western side of plot no. 14/5 was meant for children's park. This plot had been allotted to the petitioner by respondent no. 3 for purpose of development

and maintenance of garden. There is no allegation made either by respondent no.2 or respondent no.3 that the petitioner is misusing the said plot or is not able to develop the same and / or that there is any breach of conditions of allotment. In that view of the matter, I see no reason why respondents should disturb the petitioner in the small portion of land admeasuring 2700 Sq.Mts. (in plot No. G/1).

12. In the result, therefore, even while substantially rejecting the petition and upholding the cancellation of allotment to the extent of 4000 Sq.Mts. of land which is form of part of plot no. 14/5, I find appropriate to protect the present petitioner on the remaining 2700 Sq.Mts. (No.G/1) of land for the purpose of development and maintenance of garden on the terms and conditions mentioned in the communication dated 13th August, 2004. Needless to say if the respondents find breach of any other conditions or for any other valid reasons require to resume the possession of the said plot, it will be open for them to do so.

13. In view of the fact that on other grounds I have substantially rejected the petition, in view of the fact

that G.I.D.C has also not seriously debated the question of 2700 Sq.Mts. of land meant for children's park and in view of the fact that the petitioner has contended that the petitioner is a registered association, I have not examined the maintainability of the petition from the angle of unregistered society not having any legal right as urged upon by respondent no.3.

14. In the result, the petition is allowed to the limited extent. Rule made absolute to the aforesaid extent. The challenge of the petitioner regarding cancellation of allotment of 4000 Sq.Mts. of land forming part of plot no. 14/5 is rejected. Interim relief granted earlier is vacated. The petition is disposed of accordingly. Status-quo as on today to continue for two weeks at the request of learned advocate for the petitioner.

[AKIL KURESHI, J.]

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